

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

August 26, 2021

Lyle W. Cayce
Clerk

No. 21-50258
CONSOLIDATED WITH
No. 21-50262
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JOSE ALFREDO GONZALEZ-MARES,

Defendant—Appellant.

Appeals from the United States District Court
for the Western District of Texas
USDC Nos. 4:20-CR-424-1; 7:17-CR-236-1

Before SMITH, STEWART, and GRAVES, *Circuit Judges.*

PER CURIAM:*

Jose Alfredo Gonzalez-Mares, pleaded guilty to illegal reentry into the United States after having been ordered removed, in violation of 8 U.S.C.

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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§ 1326(a) and (b)(1), and admitted to violating the terms of his supervised release. Gonzalez-Mares was sentenced to 57 months of imprisonment for illegally entering the United States and received a consecutive 12-month sentence for violating the terms of his supervised release. He contends that the enhancement of his sentence pursuant to § 1326(b)(1), which imposed a mandatory maximum sentence of 10 years of imprisonment, is unconstitutional because it was based on fact that were not alleged in the indictment nor found by a jury beyond a reasonable doubt. He concedes that this argument is foreclosed by the Supreme Court's decision in *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), and merely seeks to preserve this claim for further review. The Government has filed a motion for summary affirmance, asserting that Gonzalez-Mares's argument is foreclosed.

The parties are correct that Gonzalez-Mares's assertion is foreclosed by *Almendarez-Torres*. See *United States v. Pervis*, 937 F.3d 546, 553-54 (5th Cir. 2019), *cert. denied*, No. 19-7113, 2021 WL 2519078 (U.S. June 21, 2021). Accordingly, the Government's motion for summary affirmance is GRANTED and the judgment of the district court is AFFIRMED.